

On the manner of proceeding in cases of the crime of solicitation

INSTRUCTION

[Note from BishopAccountability.org: This is an English translation of the Latin original, [Instructio de modo procedendi in causis sollicitationis](http://www.bishop-accountability.org/archives/Wall/1922_06_09_Solicitation_Instruction_English.htm) (Rome, 1922).]¹

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PRELIMINARIES

1. The crime of solicitation takes place when a priest tempts a penitent, whoever that person is, either in the act of sacramental confession, whether before or immediately afterwards, whether on the occasion or the pretext of confession, whether even outside the times for confession in the confessional or [in a place] other than that [usually] designated for the hearing of confessions or [in a place] chosen for the simulated purpose of hearing a confession. [The object of this temptation] is to solicit or provoke [the penitent] toward impure and obscene matters, whether by words or signs or nods of the head, whether by touch or by writing whether then or after [the note has been read] or whether he has had with [that penitent] prohibited and improper speech or activity with reckless daring (Constitution Sacramentum Poenitentiae, § 1).

2. [The right or duty of addressing] this unspeakable crime in the first instance pertains to the Ordinaries of the place in whose territory the accused has residence (V. below, numbers 30 and 31), and this not to mention through proper law but also from a special delegation of the Apostolic See; it is enjoined upon these aforementioned persons to the fullest extent possible, [in addition to their being] gravely encumbered by their own consciences, that, after the occurrence of cases of this type, that they, as soon as possible, take care to introduce, discuss and terminate [these cases] with their proper tribunal. However, because of particular and serious reasons, according to the norm of canon 247, § 2, these cases can be directly deferred to the Holy Congregation of the Holy Office or be so ordered. Yet [the right of] the accused respondents remains intact in any instance of judgment to have recourse to the Holy Office. However, recourse thus interposed does not suspend, excluding the case of an appeal, the exercise of the jurisdiction of the judge who has already begun to accept the case; and he can therefore have been able to pursue the judgment up to the definitive decision, unless it has been established that the Apostolic See has summoned the case to itself (cf. Canon 1569).

3. By the name of Ordinaries of the place are understood to be, each for his own territory, the residential bishop, abbot or prelate nullius, the administrator, any vicar or Prefect Apostolic, [and, in the absence of these aforementioned (dignitaries), those who succeed them in power in the meanwhile by the prescription of law or from approved constitutions (Canon 198, § 1); [This norm does not apply], however, to the vicar general, except from his [having been] specially delegated.

¹ http://www.bishop-accountability.org/archives/Wall/1922_06_09_Solicitation_Instruction_English.htm

4. The Ordinary of the place in these cases is the also the judge for regulars [religious], even though exempt. It is indeed strictly prohibited for their superiors to interpose themselves in cases pertaining to the Holy Office (Canon 501, § 2). However, having safeguarded the right of the Ordinary, there is nothing to prevent superiors themselves, if by chance they have discovered [one of their] subjects delinquent in the administration of the sacrament of Penance, from being able and having the obligation of being diligently watchful over those same persons, and, after additionally having administered salutary penances, to admonish and correct, and, if the case demands it, to remove him from some ministry. They will also be able to transfer him to another [assignment], unless the Ordinary of the place has forbidden it because he has already accepted the denunciation and has begun the inquisition.

5. The Ordinary of the place can either supervise these cases himself or commit their acceptance to an ecclesiastic who is serious and of a mature age, not however on a habitual basis or for the entire group of these cases, but on each occasion for individual cases by delegating it in writing, with the instruction of canon 1613, § 1 maintained.

6. Although, as a rule, a single judge, by reason of secrecy, is prescribed for cases of this type, it is nonetheless not forbidden for the Ordinary in the more difficult cases to approve one or two assessors and counselors, selected from the synodal judges (Canon 1575); or even to hand over the case to be handled to three judges, likewise chosen from the synodal judges according to the norm of canon 1577, with the mandate of proceeding collegially.

7. The promoter of justice – the defender of the accused – and the notary, priests who are fittingly serious, of mature age, of integrity, doctors or otherwise skilled in canon law and worthy because of their zeal for justice (Canon 1589), and not found to be at any disadvantage toward the accused, which canon 1613 treats, are to be nominated in writing by the Ordinary. The promoter of justice, however (who can be different from the promoter of justice of the Curia) [can be appointed] for the entire series of cases. The defender of the accused, however, and the notary are to be appointed each time for each case. Nor is the accused prohibited from proposing a defender seen as favorable to him (Canon 1655), who, however, is to be a priest and approved by the Ordinary.

8. Every time it involves his own location, the intervention [of the promoter of justice] is required, but in the case where he has not been cited (unless by chance he is in fact present [at the process] although not cited) the Acts must be considered invalid. But, if, however, he has been legitimately cited and is not present at some [parts of the] Acts, the Acts indeed are valid, but afterwards they will be subject in full to his examination so that he is able to comment upon all of them either in words or in writing and to propose what he has judged to be necessary or opportune (Canon 1587).

9. It is fitting that the notary, on the other hand, be present at all the Acts under pain of nullity and to note down with his own hand or at least to affix his signature [to the aforesaid Acts] (Canon 1585, § 1). Because of the special character of these procedures, however, it is necessary for the Ordinary to dispense with the presence of the notary, based on a reasonable excuse, in receiving denunciations, as well as in conducting what they refer to as [due] diligence[or “following proper procedures”], and in examining the witnesses inducted [into the case].

10. Minor helpers are not to be used unless it is absolutely necessary; and these are to be chosen, in so far as possible, from the priestly order; however, they are always to be of proven faithfulness and mature without exception. But it must be noted that, if ever necessity demands it, even non-subjects living in another territory can be nominated to receive certain actions, or the Ordinary of that territory can be asked (Can. 1570, § 2), observing, of course, all of the cautions treated as above and in canon 1613.

11. Because, however, what is treated in these cases has to have a greater degree of care and observance so that those same matters be pursued in a most secretive way, and, after they have been defined and given over to execution, they are to be restrained by a perpetual silence (Instruction of the Holy Office, February 20, 1867, n. 14), each and every person pertaining to the tribunal in any way or admitted to knowledge of the matters because of their office is to observe the strictest secret, which is commonly regarded as a secret of the Holy Office, in all matters and with all persons, under the penalty of excommunication *latae sententiae*, *ipso facto* [i.e., summary excommunication] and without any declaration [of such a penalty] having been incurred and reserved to the sole person of the Supreme Pontiff, even to the exclusion of the Sacred Penitentiary, are bound to observe [this secrecy] inviolably. Indeed by this law the Ordinaries are bound *ipso jure* or by the force of their own proper duty; the other helpers from the power of their oath [*ex iuramento*] which they must always take before they undertake their duties. And finally, [also] those who are delegated, interpolated, and informed in their absence by means of the precept [*ex praecepto*] in the letters of delegation, interpellation, [or of] information, imposing upon them with express mention of the secret of the Holy Office and of the aforementioned censure.

12. The aforesaid oath, the formula for which is to be found in the appendix of this instruction (Form A), must be given (one time for all occasions by those, obviously, who will use it habitually; but, by those who are deputed only for some determined piece of business or case, as often as required) in the presence of the ordinary or his delegate, performed upon the Gospels of God (priests must do this too), without exception, and with the added promise of fulfilling faithfully their duty, to which, however, the excommunication, mentioned above, is not extended. It must be avoided, however, by those who are put in charge of these cases, that anyone be admitted to a knowledge of these matters from helpers, unless in some way a role or an office to be performed by that person necessarily requires a knowledge of these matters.

13. Accusers or denouncers and witnesses alike must always give the oath of secrecy in cases like these. Nevertheless, they are subject to no censure, unless by chance some censure has been threatened expressly against them in the very act of accusation, deposition, or interrogation. The accused, however, should be most seriously warned that he must maintain secrecy with all others, except with his own defender, under the penalty of suspension *a divinis* in case of a transgression to be incurred *ipso facto*.

14. Finally, as for the publishing, the language, the confirmation, the custody of and the accidental nullity, in every way [these matters] must be observed which are prescribed by Canons 1642-43, 379-80-82, and 1680 respectively.

TITLE NUMBER ONE

THE FIRST KNOWLEDGE OF THE CRIME

15. Since the crime of solicitation is usually committed in the complete absence of witnesses, lest it [i.e., the crime of solicitation] remain hidden and unpunished, with an almost always inestimable detriment to souls, it has been necessary, as a rule, for a solitary person, aware of this [act of solicitation], namely, the solicited penitent, to be compelled to reveal it through a denunciation imposed by positive law. Therefore:

16. According to the Apostolic Constitutions and especially of the Constitution of Benedict XIV *Sacramentum Poenitentiae* of June 1, 1941, the penitent must denounce the accused priest of the delict of solicitation in confession within a month to the Ordinary of the place or to the Holy Congregation of the Holy Office; and the confessor must, burdened seriously in conscience, warn the penitent of this duty. (Canon 904).

17. Moreover, according to the spirit of canon 1935 anyone of the faithful can always denounce the delict of solicitation, of which he will have had a certain knowledge; also, the obligation of denunciation compels as often as the person is bound to it from the natural law itself because of the danger to faith or religion or other imminent public evil.

18. The faithful, however, who knowingly has disregarded the obligation to denounce the person by whom he was solicited, against the prescription (related above) of Canon 904, within a month, falls into an excommunication reserved *latae sententiae*, not to be absolved unless after he has satisfied the obligation or has promised seriously that he would do so. (Can. 2368, § 2).

19. The duty of denunciation is a personal one and is to be fulfilled regularly by the person himself who has been solicited. But if he is prevented by the most serious difficulties from doing this, then he should approach the ordinary or the Holy Congregation of the Holy Office or the Sacred Penitentiary either by letter or by another person favorable to him, revealing all the circumstances (Instruction of the Holy Office, February 20, 1967, n. 7).

20. Anonymous denunciations generally must be rejected. However, they can have supportive force or give the occasion for further investigations, if the particular circumstances of the matters involved render an accusation probable. (cf. Can. 1942, § 2).

21. The obligation of denunciation on the part of the solicited penitent does not cease because of a spontaneous confession by the soliciting confessor done by chance, nor because of his being transferred, promoted, condemned, or presumably reformed and other reasons of the same kind. It ceases, however, at his death.

22. Sometimes it happens that the confessor or another ecclesiastic man is deputed to receive some denunciation, together with an instruction concerning the acts to be assumed for a judicial

reason. Then that person is to be expressly warned that he should tell everything to the Ordinary or to the person whom he deputed, keeping no example or trace of it to himself.

23. In receiving the denunciations, this order is to be regularly observed: First, an oath to tell the truth while touching the Holy Gospels is to be given to the person making the denunciation; he should be interrogated according to the formula (Formula E), circumspectly, so that he narrates each and every circumstance briefly, indeed, and decently, but clearly and distinctly, pertaining to the solicitations he has suffered. In no way, however is it to be extracted from him whether he had consented to the solicitation. Rather, he should be expressly advised that he is not bound to manifest his consent which he perhaps gave. The responses [in uninterrupted fashion], not only as to what pertains to the substance but even to the words themselves of the testimony (Canon 1778) should be consigned to writing. The entire document [of the testimony] should be read in a clear and distinct voice to the one denouncing [i.e., denouncing the priest], giving [the one denouncing the priest] the option of adding, suppressing, correcting, or varying [his testimony]. His signature is then to be exacted [from him], or, if he does not know how to write, or cannot, the sign of the cross. And with him still being present, there should be added the signature of the person receiving the testimony, and if he is present (Cf. n. 9), of the notary. And before he is dismissed, there should be presented to him, as above, an oath of observing the secret, threatening him, if there is a need, with an excommunication reserved to the Ordinary or to the Holy See (cf. n. 13).

24. But if, sometimes, for grave obstructing reasons, which must always be expressed in the Acts, this ordinary practice cannot be observed, it is permitted that one or the other of the prescribed forms be omitted, but maintaining their substance. Thus, if the oath cannot be taken upon the holy Gospels, it can be given in some other way and also with words alone. If the document of denunciation cannot be put into writing in an uninterrupted fashion, it can be written down at a more opportune time and place by the interviewer (the recipient of the denunciation) and then confirmed and signed by the person who is denouncing in the presence of the one receiving the denunciation; if the document itself cannot be read to the denouncer, it can be given to him to read.

25. In more difficult cases, however, it is also permitted for the denunciation (the previous permission of the denunciator having been given, lest the sacramental seal appear violated) to be received by a confessor in the confessional itself. In this case, if it is impossible do be done at one time, [the denunciation] may be written at home by a confessor by the denunciator himself, and on a day convenient for either person it may be read or handed over to be read in the confessional, and also confirmed by the denunciator with an oath and his personal signature or by the mark of the cross (unless this is absolutely impossible to apply). But express mention of all these things, as has been stated already in the preceding number, will always have to be made in the Acts.

26. Finally, if an entirely serious and clearly extraordinary case urges, then the denunciation can also be done through a written account by the one denouncing, provided, however, it has been done before the Ordinary of the place or his delegate and notary, if he is present (cf. n. 9), and

afterwards confirmed by an oath and signed. The same must be said concerning an informal denunciation, through a letter, for example, or given orally in an extrajudicial manner.

27. Once the denunciation has been accepted, the Ordinary is bound most gravely [tenetur sub gravi] to communicate with the promoter of justice as soon as possible, who must declare in writing, whether the specific crime of solicitation in sense of no. 1 is present in the case or not, and whether the ordinary disagrees with this or not. Within ten days he must submit the matter to the Holy Office.

28. If, on the other hand, the Ordinary and the promoter of justice agree together, or in some way the promoter of justice does not make his recourse to the Holy Office, then the Ordinary, if he has decreed that the specific delict of solicitation was not present, should order the Acts to be put into the secret archives, or he should his right and office according to the nature and gravity of the things that have been denounced. If, however, he has judged it was present, then he should proceed to the inquisition (cf. Can. 1942. § 1).

TITLE NUMBER TWO

THE PROCESS

Chapter I — The Inquisition

29. As soon as knowledge concerning the crime of solicitation is known through the denunciations, a special inquisition must be pursued “so that it may become clear whether and on what foundation the imputation rests” (Canon 1939, § 1); and this by the fact or even more so, since a crime of this type, as has already been stated above, is usually done in secret, and direct testimonies concerning [solicitation], especially from the hurt party, can only rarely be obtained.

Once the inquisition is open, and if the denounced priest is a religious, the Ordinary can prevent him from being transferred before the conclusion of the process.

In general, there are three areas which such an inquisition must cover, and they are:

- a) the past history of the denounced person;
- b) the consistency of the denunciations;
- c) other persons solicited by the same confessor or somehow conscious of the crime, if any of them, as not rarely happens, are persuaded [to make the denunciation] by those denouncing.

30. Therefore, as to what pertains to the first letter (a), at the same time as the Ordinary has accepted some denunciation of the crime of solicitation, if the one denounced, whether he is

from the secular clergy or a regular (cf. n. 4), has residence in the Ordinary's territory, the Ordinary should try to find out from the archives whether other accusations against him are on record, even of a different type; and, if by chance he had previously been living in other territories, he should request both from the respective Ordinaries and, if [he is a] religious, from the regular superiors, whether they have anything which can aggravate the situation in any way. But he should relate the documents he has thus accepted in the Acts to be gathered into one [place] or to make a judgment about everything at the same time, by reason of the contiguity or connection of the cases (cf. can. 1567); or for establishing and estimating an aggravating circumstance of recidivism in the sense of can. 2208.

31. If the whole matter concerns a denounced person who does not have residence in his territory, the Ordinary should transmit all the acts to the Ordinary of the one who has been denounced, or, if he does not know who this might be, [he will transmit all the acts] to the Supreme Holy Congregation of the Holy Office, reserving the right, in the meanwhile, to deny to the denounced priest the faculty of exercising the ecclesiastical ministries in his own diocese or [the right] of revoking the faculty already by chance conceded to him, in the event that he has acceded to or returned to this faculty.

32. As to what pertains to the second letter (b), the importance of each denunciation, of their qualities and of the circumstances, must be weighed seriously and accurately so that it is evident how they themselves merit belief. It is not sufficient [that this be done] in any way whatsoever, but it is necessary that this become known by means of an established and a judicial form; this customarily is signified in the Tribunal of the Holy Office by the phrase "diligentias peragere" [to undertake all the required formalities; follow due diligence].

33. In order to arrive at this goal, as soon as the Ordinary has accepted any denunciation of the crime of solicitation, either personally or through a specially delegated priest, he will summon two witnesses (of course, separately and with appropriate circumspection), in so far as it is possible, from the ranks of the ecclesiastics. But it is far better, above any exception, to summon persons who are familiar with both the one denounced and the one denouncing. These persons, with the notary present (cf. n. 9) to put the interrogations and responses in writing, [the Ordinary] will interrogate them (Formula G) under the sanctity of an oath to tell the truth and to observe its secret nature, accompanied by the threat, if it seems necessary, of excommunication reserved to the Ordinary of the place or to the Holy See (cf. n. 13) concerning the life, morals and public reputation both of the one denounced and of the one denouncing. [They will be asked] whether they think that the one denouncing is worthy of credence; or whether, on the other hand, that person is capable of lying, of calumniating and of perjuring himself; and whether these persons know whether there has ever been any case of hatred, grudge or reason for enmity between the one denouncing and the denounced person.

34. If the denunciations are many in number, there is nothing to prevent the same [character] witnesses to be used for all or [to use different] witnesses, always being careful to have a double testimony as to the denounced and any denouncer.

35. If two witnesses cannot be found where each individual knows both the denounced and the denouncer, or if they cannot be interrogated at the same time without the danger of scandal or without detriment to the good name concerning him, then what is called *dimidiatae* procedures

are to be followed (Form H), namely, with two witnesses interrogated concerning the denounced person alone, and another two concerning only the individual denunciators. In this case, however, it will be otherwise necessary to inquire as to whether hatred, enmity or any other human disaffection against the denounced [priest] was the case.

36. If not even the divided efforts cannot be pursued, or because capable witnesses cannot be found or because scandal or detriment is deservedly to be feared, there may be a substitution supplied by putting extrajudicial information about the denounced and the ones denouncing and their mutual personal relationships in writing; or also through supportive proofs which corroborate or weaken the accusation.

37. As it pertains, then, to the third letter, (c), if in the denunciations, which happens not rarely, other persons are introduced, perhaps also solicited, or others who can bring forward testimony concerning this crime in some way, all of these people must be examined separately according to the judiciary formula (Formula I). First of all, they must be interrogated through general matters, and then, by degrees, as the matter evolves, arriving at the particulars, whether and how they had really been solicited or other persons they have known or heard to have been solicited (Instruction of the Holy Office, February 20, 1867, n. 9).

38. The greatest circumspection must be used in inviting these persons to this interview; for it will not always be opportune to bring them to a public place such as the chancery, especially if these are girls who are being subjected to the examination, married women, or those who are domestics. If those to be examined live either in monasteries, in hospitals, or in pious homes for girls, then, the particular [persons] should be summoned with great diligence and on different days according to circumstances (Instruction of the Holy Office, July 20, 1890).

39. What was said above about the way to receive the denunciations, will also be applied, after making any necessary modifications (*mutatis mutandis*), to the examination of persons who have been brought forward.

40. Should the examinations, that is, those for which the priest has stood as subject of inquiry or another person has stood as the aggrieved party, achieve a positive outcome, the denunciations are to be held as genuine and properly stated, and all the other things which are written above about these matters should be followed concerning the qualification of the crime, the resumption of preceding [actions], and following appropriate procedures.

41. But once all these matters are taken care of, the Ordinary is to communicate the Acts to the promoter of justice, who will see now whether all the procedures [actions] have been performed correctly or not. And, if he thinks that there is nothing against their acceptance, he should declare the inquisitorial process closed.

Chapter II — Canonical Directives and the Admonition of the Accused.

42. When the inquisitorial process has been closed, the Ordinary, having heard the promoter of justice, should proceed as follows, namely:

a) if it is evident that the denunciation totally lacks a foundation, he should order this to be declared in the Acts, and the documents of the accusation should be destroyed;

b) if the indications of the crime are vague and indeterminate or uncertain, he should order that the Acts be put into the archives, to be taken up again if something else happens in the future;

c) if, however, there are indications of a crime serious enough but not yet sufficient to institute an accusatorial process, as especially in the case where only one or two denunciations are had, where, indeed, [the regular process was followed] with diligence but was not corroborated by any or insufficient proofs (cf. n. 36), or else with many [proofs] but with uncertain procedures or procedures that are deficient, he should order that the accused be admonished according to the different [types of] cases (Formula M) on the first or second [offense], paternally, seriously or most seriously according to the norm of canon 2307, adding, if necessary, an explicit threat of the trial process, should some other new accusation be laid upon [the accused]; the Acts, as above, should be kept in the archives and meanwhile a check should be kept on the morals of the accused (Canon 1946, § 2, n. 2);

d) If then certain or at last probable arguments to institute the accusation are present, he should order the accused to be cited and be subjected to the matters [which are prescribed for this trial].

43. The admonition, which the preceding number with the letter (c) concerns, is always to be given secretly; it can be done, however, through a letter or by an intermediary, but in each case, it must be clear from some document to be kept in the secret archives of the Curia (cf. Canon 2309, § 1 and 5), adding the information about the manner in which the accused accepted it.

44. If, after the first admonition, other accusations against the same accused take place concerning solicitations, preceding the admonition itself, the Ordinary should see, according to his own choice and conscience, whether the first admonition should be considered sufficient or whether he should proceed to a new admonition or even to further measures (ibidem, § 6).

45. It is the right of the Promoter of Justice to appeal and to have recourse for an accused against the canonical prescriptions of this kind it to the Holy Congregation of the Holy Office within ten days from the dissemination or intimation. In this case, the Acts of the case will have to be transmitted to the same Holy Congregation according to the prescription of canon 1890.

46. These actions, however, even if put into effect, do not extinguish the penal action. And therefore, when other accusations by chance take place, a method will be followed concerning those matters which also have given cause to the said canonical instructions.

Chapter III — The decrees for the accused persons

47. When once there is sufficient cause to institute an accusation, as was said above in number 42 (d), arguments should be made openly, and the Ordinary, having heard the promoter of justice

and having observed everything, in so far as the particular nature of these cases allows, which is stated concerning the citation and denunciation of judicial acts in Book IV, Title VI, Chapter II, of the code, shall issue a decree (Formula O) concerning the accused in the presence of the Ordinary or before a judge delegated by himself (cf. n. 5), citing [him] for crimes introduced and brought against him, which in the forum of the Holy Office are said in common parlance “*Reum constitutis subiicere*” [to subject the accused to an indictment]; and he will take care to bring this information to the accused himself in accordance with canonical principles.

48. When the cited accused is present, the judge should paternally and gently exhort him, before the indictments are formally begun, to confession, and, when he has consented to these exhortations, the judge, having summoned the notary or else, if he has found it more opportune (cf. n. 9) without his intervention, can receive the confession.

49. In this case, if the confession is found corroborated by the Acts and substantially complete, a vow first having been taken, the Promoter of Justice puts the case in writing, omitting the other formalities (see below, in Chapter IV), and he will be able to conclude [all of this] with a definitive decision, having given, however, to the accused the option of accepting the decision itself or of petitioning to have the regular and complete process carried out to the end.

50. But if, on the other hand, the accused has denied the crime, or has made a confession that is not substantially complete, or even has summarily refused the decision in view of his confession, the judge, with the notary present, should read him the decree by which he declares, concerning which paragraph 47 speaks, and the deliberations are then opened.

51. The trial opened, the judge can, having heard the Promoter of Justice according to the aim of canon 1956, suspend the accused respondent either from exercising any sacred ministry at all or only from hearing the sacramental confessions of the faithful up until the time of the judgment. If, however, by chance he thinks that [the accused] can impose fear upon the witnesses or secretly bribe them or in any way impede the course of justice, he can also, having also heard the promoter of justice, order that he go to a predefined location and remain there under special vigilance (Canon 1957). And a remedy of law is not granted against either of these decrees [i.e., canons 1956 and 1957] (Canon 1958).

52. These things having been taken care of, there should be a procedure to present the accusation to the person accused, according to formula P, having cautiously and most diligently made sure that the persons of the accused and especially of those denouncing him are not to be revealed, and, on the part of the accused, that he in no way violate the sacramental seal. Now if something in the heat of conversation slips out which seems to savor of either a direct or indirect violation of the seal, the judge should not permit this to be referred to in the Acts by the notary; and if, by chance, it has been inconsiderately [put into the Acts], he should order, as soon as he notices it, to be completely deleted. In every way the judge is to remember that it is never right for him to bind the accused by an oath to tell the truth (cf. Canon 1744).

53. The indictment of the accused having been completed in all matters and the Acts having been seen and approved by the Promoter of Justice, the judge is to issue a decree concerning the

conclusion of the case (canon 860), and, if by chance he is a delegated judge, he should transmit all the papers of the proceedings to the Ordinary.

54. If it happens, however, that the accused remains contumacious, or, for some grave reasons the indictments cannot be pursued in the diocesan Curia, the Ordinary, saving to himself the right of suspending the accused *a divinis*, should defer the entire case to the Holy Office.

Chapter IV — The Discussion of the Case, the Definitive Decision, and the Appeal

55. The Ordinary, having received the Acts, unless he wishes himself to proceed to the definitive decision, should delegate the judge (cf. n. 5), another one, in so far as it can be done, different from the one who conducted the inquisition or the indictment (cf. Canon 1941, § 3). The judge, however, whoever he is, whether the Ordinary or his delegate, should designate, according to his prudent decision, a space of time for the defender to prepare a defense and to tender this in a double copy, one copy to be given to the judge himself and the other copy to the Promoter of Justice (cf. Canons 1862-63-64). However, the promoter of justice, within a time period likewise previously established by the judge, should tender in writing his own inquiry (*requisitoriam*), as they now call it.

56. Still, a congruent time having been interposed (Canon 1870), the judge, according to his conscience informed from the Acts and from the proofs (Canon 1869), will pronounce a definitive decision, either a condemnatory decision, if he is certain of the crime, an acquittal, if he is certain of his innocence; or an abandonment of the charges, if he is unwaveringly doubtful because of the lack of proofs.

57. The decision is rendered according to the respective formulas connected to this Instruction and put in writing, with the addition of an executory decree (Canon 1918). First of all, the Promoter of Justice having been notified beforehand, the decision must be solemnly made known to the accused, who has been cited for this by the judge who is presiding at the Tribunal, with the notary present. If, however, the accused, rejecting the citation, has not appeared, the communication of the decision should be made through letter, having obtained exact testimony of its reception through the public post office.

58. Both the accused, if he thinks that he has been wrongly treated, and the promoter of justice have the right of appealing from this decision to the Supreme Tribunal of the Holy Office, according to the prescription of canon 1879 and following within ten days from the solemn notification of the same; and the appeal of this type has the effect of suspending the decision [*suspensivo*], but not so, if it is given (cf. n. 51) for a suspension from the hearing of sacramental confessions or from exercising a sacred ministry.

59. The appeal having been made, the judge must transmit an authentic copy or the original itself of all the Acts of the case to the Holy Office, as quickly as it can be done, adding information as necessary or as he has judged to be opportune (Canon 1890).

60. As for the complaint, then, of nullity, as sometimes might occur, let those details prescribed by canons 1892-97 be observed to the last detail. However, those prescriptions should also be observed as it pertains to the execution of the decision, according to the nature of these cases, as is found in canons 1920-24.

TITLE NUMBER THREE

PENALTIES

61. “He who has committed the crime of solicitation. . . , should be suspended from the celebration of Mass and from the hearing of sacramental confessions or even, according to the gravity of the delict, should be declared incapable of accepting them. He should be deprived of all benefices and dignities, of his active and passive voice, and be declared incapable for all these [honors and capacities], and in the more grievous cases also be subjected to reduction [to the lay state]. Thus states the Code in canon 2368, § 1.

62. For a correct and practical application of this canon, in penalties decreed against priests convicted of the crime of solicitation with an equal regard for the aim of canon 2218, § 1, these matters, especially for estimating the gravity of the crime, should be kept before one’s eyes, namely: the number of persons solicited and their condition, as, for example, if they are minors in age or especially consecrated through religious vows to God; the form of solicitation, if perhaps, especially, it is joined with false teaching or false mysticism; the turpitude of the acts not only formal but also material and especially the connection of solicitation with other delicts; the length of the obscene conversation [between the parties involved]; the repetition of the crime, the recidivism after his admonition, and the obstinate malice of the solicitor.

63. For a religious who is accused, a reduction to the status of lay-brother can be added to the extreme penalty of degradation. This is only then imposed when, having weighed everything, it manifestly appears that the accused, immersed in the depths of malice in the abuse of his sacred ministry, combined with the grave scandal that is harmful to the faithful and their souls, exists to such a degree of foolhardiness and habit, so that there is not hope, humanly speaking, or almost no hope, of his amendment that is evident any more.

64. On top of the penalties properly imposed, in order to obtain the effect of these penalties more fully and securely, there will be supplementary sanctions in cases of this type, namely:

a) Upon all accused persons judicially convicted there should be interposed penances that are congruent to the degree of the faults, and salutary, not in substitution for the penalties properly speaking in the sense of canon 2312, § 1, but as a complement [to them], and among these (cf. Canon 2313) particularly spiritual exercises for a few days in some religious house, to be performed with a suspension, during these times, from the celebration of Mass.

b) Upon the convicted accused who has confessed, moreover, there should be imposed an abjuration, according to the different cases, [whether it is] a light or a strong suspicion of heresy the soliciting priests incur based on the nature of the crime, or even a formal heresy, if perhaps the crime of solicitation has been connected with false dogma.

c) Those who are in danger of falling back [into their former ways], and therefore of becoming greater recidivists should be submitted to particular vigilance (Canon 2311).

d) As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining a certain place (Canon 2302).

e) Then, since concerning the absolution of an accomplice, as it is outlined in the Constitution *Sacramentum Poenitentiae*, no account can be ever be held in the external forum, for the sake of the sacramental seal, a counsel should be added at the end of the condemnatory sentence that, if [the priest] has by chance absolved his accomplice, he should quiet his conscience by having recourse to the Sacred Penitentiary.

65. According to the norm of canon 2236, § 3, all of these penalties, once they have been applied by the judge *ex officio*, cannot be remitted except by the Holy See through the Supreme and Sacred Congregation of the Holy Office.

TITLE IV

OFFICIAL COMMUNICATIONS

66. Whenever an Ordinary immediately accepts a denunciation of the crime of solicitation, he should not omit telling this to the Holy Office. And if by chance he treats of a priest whether secular or religious having residence in another territory, he should transmit at the same time (as already has been stated above, n. 31) to the Ordinary of the place, where the denounced actually is staying, or, if the address is not known, he should send to the Holy Office an authentic copy of the denunciation itself with the procedures, in the best manner possible, and with opportune information and declarations.

67. Any Ordinary who has proceeded correctly against some priest who is soliciting, should not omit informing the Holy Congregation of the Holy Office, and, if it is a matter in which a religious is involved, also the General Superior concerning the outcome of the case.

If any priest condemned of the crime of solicitation, or even only admonished, should transfer his residence to another territory, the Ordinary *a quo* [i.e., from whom the priest is leaving] should immediately warn the Ordinary *ad quem* [i.e., to whom the priest is taking residence] of the things that preceded that person and of his juridical status.

69. If any priest suspended in a case of solicitation from hearing sacramental confessions but not from sacred preaching happens to go to another territory to preach, the Ordinary of this territory should be reminded by the prelate of the accused, whether secular or religious, that he cannot be utilized for hearing sacramental confessions.

70. All these official communications shall always be made under the secret of the Holy Office; and, since they concern the common good of the church to the greatest degree, the precept of doing these things obliges under serious sin [sub gravi].

TITLE V

THE WORST CRIME

71. By the name of the worst crime is understood at this point any obscene external deed, gravely sinful, perpetrated or attempted in any way by a cleric with a person of his own sex.

72. Those things that have been stated concerning the crime of solicitation up to this point are also valid for the worst crime, changing only those things necessary to be changed according to the nature of the matter, if perchance any cleric happens to be accused of this (God forbid) before the local Ordinary, with the obligation of denunciation exempted based on the positive law of the Church, unless perhaps it has been joined with the crime of solicitation in sacramental confession. But in decreeing penalties against delinquents of this type, canon 2359, § 2 should also be kept in view in addition to those which are found mentioned above.

73. The following are equivalent to the “worst crime” as far as the penal effects: any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex or with brute animals (bestiality).

From the Audience of His Holiness on June 9, 1922

Our Most Holy Father Pope Pius XI, in an audience granted to the most eminent Cardinal Secretary of the Holy Office on June 8, 1922, deigned to approve and confirm this Instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail.

At Rome, from the Office of the Sacred Congregation, June 9, 1922.

Place of the Seal

A. Cardinal Ottaviani

R.Card. MERRY DEL VAL.